APPEAL NO. 040410
FILED APRIL 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 20, 2004. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; and (2) the claimant had disability from August 14, 2003, through November 30, 2003. The appellant (self-insured) appeals these determinations on legal and evidentiary grounds. The claimant urges affirmance.

DECISION

Affirmed.

The claimant worked as a driver's license examiner for the employer. The claimant was required to enter commercial and personal vehicles to administer driving tests. On _____, the claimant administered a test for a school bus license. The claimant was seated on the right, front passenger bench, while administering the exam. The claimant testified that the seat was very confined because it was designed for children. The claimant further testified that she had to hold on to the rail in front of her seat, pull herself up, and walk sideways in order to exit the front seat upon completion of the examination. When arising from her seat, the claimant felt a stinging and burning sensation in her low back. The pain increased and radiated down her left buttock and leg as she walked down the stairs to exit the school bus. The claimant sought treatment on the date of injury. The initial medical report indicates lower back pain and muscle spasm. An MRI revealed an L4-5 mild central disc protrusion, which mildly impinges the thecal sac, mild disc desiccation, small annular tears, and mild degenerative facet joint hypertrophy. The medical evidence shows that the claimant was taken off work on _____, and continuing through December 3, 2003. The claimant testified that she could not work due to her injury, from August 14, 2003, through November 30, 2003, but returned to light-duty work at her preinjury wage beginning December 1, 2003.

The self-insured argues that the claimant did not sustain an injury on _____, but merely experienced pain from a preexisting degenerative condition. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination that the claimant sustained an injury on _____, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The self-insured also argues that the injury is not compensable, as a matter of law, because the risk of such an injury was one that the claimant encountered irrespective of her employment. Although not cited, the self-insured appears to rely on the positional risk test in Employers' Casualty Company v. Bratcher, 823 S.W. 2d 719 (Tex. App.-El Paso 1992, writ denied). Under Bratcher, the focus of the inquiry is upon whether the injury would have occurred if the conditions and obligations of employment had not placed the claimant in harm's way. We have said that because an injury could have occurred at some other location does not mean that an on-the-job injury becomes noncompensable under the positional risk test. Texas Workers' Compensation Commission Appeal No. 951736, decided December 7, 1995. In addition, the use of the word "would" by the Bratcher court is indicative of the inevitability of the injury as opposed to the possibility that it could occur elsewhere. Id. The purpose of the positional risk test is to ensure that there is some connection between the work and the risk of injury. Id. In this case, the evidence shows that the claimant experienced pain and burning in her low back when standing up in cramped quarters, after administering a driving test. That is, the evidence shows that the employment brought the claimant in contact with the risk that in fact caused her injury. Accordingly, we do not agree that the claimant's injury is not compensable under the positional risk doctrine.

The self-insured contends that the claimant's injury is idiopathic in nature and is not compensable because it did not involve an instrumentality of the employer. We do agree that the claimant's injury was idiopathic. The evidence clearly establishes a known mechanism of injury, *viz*., the claimant injured her low back when pulling herself up in a confined space after administering a driving test. Under the circumstances presented here, the claimant need not also show that the injury involved an instrumentality of the employer. *See* Texas Workers' Compensation Commission Appeal No. 012582, decided February 4, 2002; Texas Workers' Compensation Commission Appeal No. 951583, decided November 9, 1995.

The self-insured, next, appears to assert that the injury is not compensable, as a matter of law, because standing up is an ordinary activity of life. We recognize that an occupational disease injury generally excludes an "ordinary disease of life to which the general public is exposed outside of employment . . . " Section 401.011(34). However, this case involves a specific injury and not an occupational disease. Accordingly, we will not reverse the hearing officer's decision on this basis.

The self-insured also asserts that the hearing officer committed reversible error by failing to define the injury. The hearing officer found that the claimant sustained a low back injury as asserted by the claimant. We note that extent of injury was not at issue in this proceeding, nor was it actually litigated. In the absence of such an issue, we do not agree that the hearing officer erred by not defining the extent of the claimant's low back injury.

The self-insured further asserts that the hearing officer committed reversible error by failing to make sufficient underlying findings of fact in support of the decision. In our view, the hearing officer's Findings of Fact combined with the Statement of the

Evidence make clear the basis of the hearing officer's decision. Accordingly, we perceive no reversible error.

With regard to disability, the self-insured argues that it cannot be determined without first determining the nature or the extent of the compensable injury. In view of the claimant's testimony and the medical evidence above, we believe the hearing officer could find that the claimant had disability resulting from the compensable low back injury, beginning August 14, 2003 and continuing through November 30, 2003. The hearing officer's determination in this regard is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge